

REMARKS

Applicant has carefully reviewed this Application in light of the Office Action mailed September 26, 2002. Applicant believes all pending claims, as originally submitted, are allowable over the references cited by the Examiner. Applicant respectfully requests reconsideration and favorable action in this case.

Claim Rejections—35 U.S.C. § 103(a)

The Examiner rejected Claims 1, 6-10, 15-19, 24-28, and 33-36 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,363,426 (“*Yon*”) or U.S. Patent No. 5,962,608 (“*Onosaka*”).

Yon issued from a patent application filed on January 7, 2000, which is after Applicant’s filing date of September 27, 1999. As a result, *Yon* does not qualify as prior art to Applicant’s claimed invention and cannot be used as a basis for a patentability rejection under 35 U.S.C. § 103.

Onosaka does not disclose, teach, or suggest Applicant’s claimed invention as recited in Claims 1, 6-10, 15-19, 24-28, and 33-36.

Independent Claim 1 and Dependent Claims 6-9

Independent Claim 1 recites:

An access server, comprising:
a plurality of modems;
a memory operable to store a performance attribute for each modem;
an allocation module coupled to the memory and operable to receive a modem request and to select a modem for service according to the modem’s performance attribute; and
a telecommunications interface coupled to the allocation module and operable to couple a remote modem to the selected modem.

Onosaka does not disclose, teach, or suggest “a memory operable to store a performance attribute for each modem,” as recited in Claim 1. The Examiner identifies Figure 13 of *Onosaka* as a memory for storing a performance attribute for each modem. Although Figure 13(a)

purports to be a data structure, Figure 13(a) does not store “a performance attribute for each modem.” As described in the specification, each modem profile 710 in Figure 13(a) includes “the modem name, a ‘init’ string to initialize the modem, a value representing the kind of modem (i.e., internal, external or card modem), and a string named version 1 tuple, which includes modem card’s manufacture, model name, etc.” (col. 10, ll. 41-45). None of these stored variables qualify as a performance attribute.

In addition, *Onosaka* does not disclose, teach, or suggest “an allocation module coupled to the memory and operable to receive a modem request and to select a modem for service according to the modem’s performance attribute,” as recited in Claim 1. The Examiner identifies a “selector circuit” from *Onosaka* as the recited allocation module. Applicant respectfully disagrees. *Onosaka* does not describe an allocation module that “select[s] a modem for service according to the modem’s performance attribute.” (As shown above, the system in *Onosaka* does not even store a performance attribute for each modem.) Rather than use “an allocation module . . . to select a modem for service according to the modem’s performance attribute,” the system in *Onosaka* allows the user to select the modem:

The present invention provides an operating system or system software which switches between a modem driver for a modem on a removable card, for an internal modem, or for an external modem based on selecting the current modem. **This selection is made by simple user actions** within an intuitive and easy to use metaphor. **Based on the user’s actions**, the system software dynamically changes the pointers to the currently selected modem driver and/or the currently selected serial driver.

(col. 4, ll. 29-37) (emphasis added). (See also col. 4, ll. 45-46 (“A modem menu allows the user to select as currently active one of the modems from the available modem list.”)).

For at least these reasons, independent Claim 1 is patentable over *Onosaka*. Accordingly, Applicant respectfully requests reconsideration and the allowance of Claim 1, together with those

claims that depend from Claim 1. Claims 6-9, which depend from independent Claim 1, are also patentable because, at a minimum, they includes the limitations of base Claim 1.

Independent Claim 10 and Dependent Claims 15-18

Independent Claim 10 recites:

A method of selecting a modem for service, comprising:
 storing a performance attribute for each of a plurality of modems;
 receiving a modem request;
 selecting a modem for service according to the modem's performance attribute; and
 coupling a remote modem and the selected modem.

Onosaka does not disclose, teach, or suggest "storing a performance attribute for each of a plurality of modems," as recited in Claim 10. As discussed above with reference to Claim 1, the data structure described in *Onosaka* stores various variables, but none of the described variables qualifies as a performance attribute.

In addition, *Onosaka* does not disclose, teach, or suggest "selecting a modem for service according to the modem's performance attribute," as recited in Claim 10. As discussed above with reference to Claim 1, the system in *Onosaka* allows the user to select the modem rather than "select[] a modem for service according to the modem's performance attribute."

For at least these reasons, independent Claim 10 is patentable over *Onosaka*. Accordingly, Applicant respectfully requests reconsideration and the allowance of Claim 10, together with those claims that depend from Claim 10. Claims 15-18, which depend from independent Claim 10, are also patentable because, at a minimum, they includes the limitations of base Claim 10.

Independent Claim 19 and Dependent Claims 24-27

Independent Claim 19 recites:

An apparatus for selecting a modem for service, comprising:
a memory operable to store a performance attribute for a plurality of modems; and
an allocation module coupled to the memory and operable to receive a modem request, to select a modem for service according to a performance attribute stored in the memory, and to communicate a modem identifier associated with the selected modem.

Onosaka does disclose, teach, or suggest “a memory operable to store a performance attribute for a plurality of modems,” as recited in Claim 19. As discussed above with reference to Claim 1, *Onosaka* describes a data structure in conjunction with its Figure 13, but the data structure does not store a performance attribute.

In addition, *Onosaka* does not disclose, teach, or suggest “an allocation module coupled to the memory and operable to receive a modem request, to select a modem for service according to a performance attribute stored in the memory, and to communicate a modem identifier associated with the selected modem,” as recited in Claim 19. As discussed above with reference to Claim 1, the system in *Onosaka* allows users to select modems rather than “select a modem for service according to a performance attribute stored in the memory.”

For at least these reasons, independent Claim 19 is patentable over *Onosaka*. Accordingly, Applicant respectfully requests reconsideration and the allowance of Claim 19, together with those claims that depend from Claim 19. Claims 24-27, which depend from independent Claim 19, are also patentable because, at a minimum, they includes the limitations of base Claim 19.

Independent Claim 28 and Dependent Claims 33-36

Independent Claim 28 recites:

Modem selection software embodied in a computer-readable medium and operable to perform the following steps:
 storing a performance attribute for each of a plurality of modems;
 receiving a modem request;
 selecting a modem for service according to the modem's performance attribute; and
 coupling a remote modem and the selected modem.

As discussed above with reference to Claim 1, *Onosaka* does not disclose, teach, or suggest “storing a performance attribute for each of a plurality of modems” or “selecting a modem for service according to the modem's performance attribute,” as recited in Claim 28. For at least these reasons, independent Claim 28 is patentable over *Onosaka*. Accordingly, Applicant respectfully requests reconsideration and the allowance of Claim 28, together with those claims that depend from Claim 28. Claims 33-36, which depend from independent Claim 28, are also patentable because, at a minimum, they includes the limitations of base Claim 28.

Claim Rejections—35 U.S.C. § 103(a)

The Examiner rejected Claims 2-5, 11-14, 20-23, and 29-32 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,363,426 issued to *Yon*.

Yon issued from a patent application filed on January 7, 2000, which is after Applicant's filing date of September 27, 1999. As a result, *Yon* does not qualify as prior art to Applicant's claimed invention and cannot be used a basis for a patentability rejection under 35 U.S.C. § 103. Accordingly, Applicant respectfully requests reconsideration and the allowance of Claims 2-5, 11-14, 20-23, and 29-32.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. In light of the Remarks set forth above, Applicant respectfully requests further examination and full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, Applicant invites the Examiner to contact the undersigned attorney at the Examiner's convenience at (214) 953-6791.

Although Applicant believes that no fees are due, Applicant authorizes the Commissioner to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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